

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound Competitive Multi Service Agreements
With Foreign Postal Operators
Canada Post Corporation—United States Postal Service
Bilateral Agreement (MC2011-34)
Negotiated Service Agreement

Docket No. CP2014-13

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE CONCERNING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT
(WITH CANADA POST)

(December 23, 2014)

The Public Representative hereby provides comments pursuant to Order No. 1907.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on the Postal Service's Notice of its entry into an additional bilateral agreement for inbound competitive services with the Canada Post Corporation (Canada Post).² The Postal Service seeks to include the inbound portion of a bilateral agreement with Canada Post (Canada Post 2014-2015 Agreement) within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 1.

In Order No. 546, the Commission approved the addition of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list, and included within that product an agreement with Koninklijke

¹ PRC Order No. 1907, Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (With Canada Post Corporation), December 16, 2013.

² Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 13, 2013 (Notice).

TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement).³ The Commission subsequently added bilateral agreements with the China Post Group (China Post 2011 Agreement) and Posten Norge AS (Norway Post Agreement) to the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.⁴ The Commission also approved bilateral agreements with the Australian Postal Corporation (Australia Post Agreement), the Canada Post Corporation (Canada Post Agreement), and the Hongkong Post (Hongkong Post Agreement).⁵ More recently, the Commission determined that the bilateral agreements with Royal PostNL BV, a successor agreement to the TNT Agreement, and Deutsche Post should be included within the product.⁶ In this proceeding, the Postal Service designates the Canada Post 2012-2013 Agreement—the immediate predecessor to the 2014-2015 Agreement—as the baseline agreement in this docket. *Id.* at 2.

The Canada Post 2014-2015 Agreement establishes prices and classifications for the delivery of inbound Air Parcel Post (Expedited Parcels USA) and Express Mail Service (EMS) in the United States. Notice at 3. The 2014-2015 Agreement is intended to become effective January 1, 2014, and remain in effect for a period of two years unless terminated sooner. *Id.*; *id.*, Attachment 2, at 7-8.

³ PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

⁴ PRC Order No. 859, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011; PRC Order No. 840, *supra*.

⁵ PRC Order No. 956, Order Concerning An Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2012-1, November 9, 2011; PRC Order No. 1088, Order Adding an Additional Bilateral Agreement to Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Product, Docket No. CP2012-4, December 30, 2011. PRC Order No. 1580, Order Approving An Addition Inbound Competitive Multi-Service Agreement with Foreign Postal Operators Negotiated Service Agreement, Docket No. CP2013-22, December 17, 2012.

⁶ PRC Order No. 1593, Order Approving Addition of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), Docket No. CP2013-24, December 16, 2012; PRC Order No. 1761, Order Approving Addition of Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Deutsche Post), Docket No. CP2013-65, June 26, 2013.

COMMENTS

The Public Representative has reviewed the Canada Post 2014-2015 Agreement and the supporting financial model filed under seal that accompanied the Postal Service's Notice. Based upon that review, the Public Representative concludes that the Canada Post 2014-2015 Agreement is functionally equivalent to the Canada Post 2012-2013 Agreement. Moreover, the negotiated inbound rates offered in the Canada Post 2014-2015 Agreement are likely to generate sufficient revenue to cover attributable costs.

Functional Equivalence. The Postal Service asserts that the Canada Post 2014-2015 Agreement is substantially similar to the inbound portion of the predecessor agreement in terms of the products being offered under the contract and the contract's cost characteristics. *Id.* at 4. Moreover, the 2014-2015 Agreement includes the same competitive services (inbound Air Parcel Post and EMS) as the 2012-2013 Canada Post Agreement.⁷

However, the Postal Service identifies differences between the Canada Post 2014-2015 Agreement and the predecessor agreement, including: in Article 13: Procedure Respecting USPS Postal Regulatory Commission Filings, a more expansive definition of "Routine Filings"; in Article 20: Notices, the use of email and EMS service to provide notices, in addition to alternatives previously available, and removing Registered Mail as an alternative; in Attachment 10, Customer Service, moving terms and conditions from Article 26, and renumbering all subsequent articles.

The Postal Service also identifies differences in the attachments to the 2014-2015 Agreement compared to the predecessor agreement, including: in Attachment 1: Rates, adding rates for the International Merchandise Return service market test, and rates for Tracked Packet Retail and Tracked Packet Commercial products; in Attachment 2: Scanning and On-Time Quality of Service Measurement and Pay-For-

⁷ *Id.* at 3. In this regard, the Postal Service's Notice does not address the market test of International Merchandise Return Service, described in Docket No. MT2013-2. *Id.* Nor does the Notice address the terms and conditions for International Business Return Service, as the service has not yet been launched. *Id.* at 3 - 4. An appropriate amendment to the Agreement a separate notice will be filed prior to launch. *Id.*

Performance, changes to negotiated thresholds, targets, penalty determination formulas, and settlement processes; terms to enable the Parties to make changes to Critical Entry Times and Latest Arrival Times without amending the agreement; and, the addition of the PRIME product; in Attachment 3: Modified Agreement on the International Exchange of EMS Items Between the U.S. Postal Service and Canada Post, entries in the Table of Differences to account for “errors” in the underlying EMS Standard Agreement, now corrected by the EMS Cooperative; in Attachment 5: Terms for Shared Transportation and Operations Initiatives, the addition of certain operations initiatives intended to improve quality of service; and, Attachment 7: Product Development and Collaborative Initiatives, the addition of product development and collaborative initiatives related to existing or potential new products.

The Postal Service “does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the agreements.” Notice at 6-7. The Public Representative agrees that these differences do not alter the conclusion that the Canada Post 2014-2015 Agreement is functionally equivalent to the predecessor agreement. Like the predecessor agreement, the Canada Post 2014-2015 Agreement offers rates for inbound Air Parcel Post and EMS, and therefore exhibits similar cost or market characteristics.

39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service must demonstrate that the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product covers attributable costs, which precludes the subsidization of competitive products by market dominant products and makes an appropriate contribution to the institutional costs of the Postal Service. In this proceeding, the Postal Service’s financial model does not demonstrate that the addition of the Canada Post 2014-2015 Agreement results in the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product as a whole covering costs as required by 39 U.S.C. § 3633(a)(2). However, the Postal Service’s financial model indicates that the negotiated rates in the Canada Post 2014-2015 Agreement will generate sufficient revenues to cover its attributable costs, and therefore will not degrade the cost coverage of the product.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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